evidence might be adduced to show which was intended.

In *In re the Goods of George Ashton*, (1892) P. 83 as the will applied the words nephew and niece both to legitimate and illegitimate relatives indiscriminately it was decided that extrinsic evidence was admissible to show that an illegitimate and not legitimate nephew was intended by the will.

The gist of these cases is that the primary meaning of nephew implies consanguinity and I think in the absence of authority to the contrary, that the primary meaning of uncle also implies consanguinity.

I think there is no doubt that the ordinary meaning of "child" is a person born by a woman to her lawful husband. A bastard, a *nullius filius*, is not a son, a distinction drawn by the writer of the Epistle to the Hebrews "then are ye bastards and not sons." Thus in *Godfrey* v. *Davis* 6 Ves. Jun. 43, Arden M.R. said: "Such persons only could be intended, who could entitle themselves as children by the strict rule of law; and no illegitimate child can claim under such a description, unless particularly pointed out by the testator. To the same effect is *Dover* v. *Alexander*, 2 Hare 275. 'Child' taken *simpliciter* means a legitimate child only unless there are any words by which that sense may be controlled, or anything in the context shewing that the word is intended to be used in a secondary sense." Such an intention was inferred in *Wilkinson* v. *Adam* 1 V. & B. 163 where the only children the testator ever had were illegitimate, and in *Quaik Kee Hock*, 4 Ky. 128 where the intention to be gathered from the will shewed that "children" was intended to mean adopted children. In that case Ford C.J. expressly declined to decide whether or not the word "child" in a Chinaman's will included an adopted child. When construing an English will in an English colony where adoption is no part of its law Common or Statute I think the word should not be taken as including an adopted child unless the will indicates that such is intended. The adopted child does not in English law take under an intestacy of his adoptive "father:" why should he take under the will of that "father" to the detriment of that father's natural children?

Under the English Act of 1926 an adopted child succeeds on the intestacy of his natural parents, not on the intestacy of his adoptive parents. So far as I know it has not been decided (and certainly it does not arise for decision in this case) that adoption as the word is used in this Colony deprives a person adopted into one family from succeeding on the intestacy of his natural father, nor that a bequest to "my children" cannot be shared by a natural legitimate child who has been adopted into another family.

But in the case before me the will itself contains a clear indication that "uncle" and "children" were used by the testator in their English sense. The very clause the subject of this summons speaks of children and sons and concludes with the words "my adopted son Tan Chin Tuan." Clearly the testator distinguished between "sons" and adopted sons, even to the extent of redundancy for Tan Chin Tuan being named in the will would not have been deprived of the bequests of having the description "son" applied to him unless it could be shewn that the testator had a natural legitimate son also called Tan Chin Tuan.

For these reasons I answer the first and fourth questions propounded in the summons:

1. "Paternal uncles in China" refers to the natural and lawful brothers of the father of the testator, residing in China.
4. "The children of my paternal uncles in China" refers to the natural and lawful children of such paternal uncles.

Questions two and five therefore do not arise.

Solicitors for Plaintiff—*Braddell Bros.*

Solicitors for Defendants—
Donalson & Burkanshaw.

Solicitors for C. F. J. Ess—*S. C. Goho & Co.*

[ORIGINAL CIVIL JURISDICTION]

CUSSEN, J.

February 7, 1937.

K. K. N. K. KANAPPA CHETTIAR.....
.....Plaintiff.

VS.

PAKKIRI & 2 ORS.....Defendants.

AND

K. K. N. K. KANAPPA CHETTIAR.....
.....Plaintiff.

VS.

PAKKIRI .....Defendant.

[SINGAPORE CONSOLIDATED SUITS Nos. 53 and 261 of 1936.]

Moneylenders—state of loan—demand for information concerning—lender's duty—retrospective legislation'—Moneylenders Ordinance (Chapter 218) S. 7.

Where, in respect of a loan made before the Ordinance came into operation, the moneylender supplied the borrower with a statement purporting to show the state of the loan but such statement was not in accordance with the requirements of the Ordinance.

Held, that the lender is debarred under Section 7 of the Ordinance from suing for or recovering any sum due on the contract of loan on account either of principal or interest.

TRIAL OF ACTION.

The material facts established and defences raised in this case appear sufficiently from the judgment below.

Aditan for the plaintiff.

Wilson for the defendants.

Cur. Ad. Vult.

CUSSEN, J.—The Plaintiff in Civil Suit 53 of 1936 by writ of summons dated 30th January 1936 claimed from three persons—(1) Pakkiri. (2) Pethayee Ammal (f) and (3) Suna Singara Vandayar a sum of $1,276.80 as the amount due on a promissory note for $760 dated 31.1.33 and signed by the three Defendants aforesaid.

On 22.4.36 the Plaintiff commenced an action in the District Court, Singapore (Summons 1865 of 1936) against Pakkiri claiming a sum of $500 on a promissory note for $307.50 dated the 13th January, 1932. The total amount due on this promissory note was $613 but the Plaintiff relinquished $113 to bring the claim within the jurisdiction of the District Court.

On the application of the Defendant orders were made transferring this from the District Court to the Supreme Court as Civil Suit 261 of 1936 and consolidating it with Civil Suit No. 53 of 1936.

Both claims are defended by Pakkiri and Pethayee Ammal (his wife).

The execution of the promissory note is admitted. The promissory note for $760 is Exhibited P1 and that for $307.50 is P3.

As regards P3 the Defendant alleges—

(a) that the loan has been repaid;
(b) that the promissory note was rendered void by material alteration there made after the execution by the Defendant;
(c) that the promissory note is barred by Limitation.

As regards P1 the defence alleges—

(a) that there was no consideration;
(b) that certain blanks in P1 as executed by the defendants were not filled up within a reasonable time nor in accordance with the authority given by the Defendants;
(c) that the promissory note was rendered void by a material alteration made without authority after the execution by the Defendants;
(d) that the statement supplied by the Plaintiff under section 12 of the Moneylenders Ordinance is not a correct and true statement.

By way of counterclaim the Defendant Pakkiri asks for an account to be taken of his dealings and transactions with the Plaintiff between 1928 and 1932.

Vengadasalam gives evidence for Plaintiff. He has himself no knowledge of the transactions as he came to this country on 12th February 1934. His evidence consists in explanation and interpretation of the Plaintiff's account books. So doing he tells us that on 16.10.31 a promissory note for $720 was executed by the Defendants but that the amount actually advanced in cash was only $600—the $120 additional in the note being ten months interest on $600 at 2 per cent per month; therefore the principal of this loan was $600.

He says that on 31.1.33—the date of the promissory note for $760—there was due on the promissory note for $720 in respect of principal and interest a sum of $744 and that this sum owing then became the principal of the promissory note for $760.

Now I can see nothing in the accounts produced to show that this is what actually happened when the promissory note for $760 was made. It is quite clear from the books that the amount due on 31.1.33 in respect of the promissory note for $720 cannot be $744 but only some much lesser sum.

The witness is unable to show how the figure of $744 is arrived at and has to fall back upon saying that "the Defendant consented to the amount of $744 on 31.1.33" which, seeing that he has no personal knowledge of what took place on 31.1.33, is not relevant to prove any such agreement by the Defendant.

The Defendant has given evidence that when the promissory note for $760 was made no money was received.

The Plaintiff—by his witness Vengadasalam agrees that no money was paid over, but that the consideration was the paying-off of the balance due on the previous loan, but he is in my opinion, unable, legitimately, to establish this from the only source of knowledge available, i.e. the account books.

At its highest the evidence adduced by the Plaintiff—i.e. the account books—shows that the credit payment of $744 on 31.1.33 was in respect of an instalment note, and, as examination of the accounts show that the only promissory note of the Defendants outstanding at that date was the promissory note for $720, it may be concluded that the entry of $744 is a payment by the Defendant in respect of this promissory note.

This is in fact what the witness is doing in his evidence but he is at once faced with the difficulty of showing how the figure of $744 is arrived at and he fails to do so. The result is that even now at the hearing of this suit the Plaintiff is unable to show what is the principal of the loan in respect of which this promissory note for $760 was given by the Defendant.

"Principal" is defined in section 2 of the Moneylenders Ordinance, i.e. "Principal" means in relation to a loan the amount actually lent to and received by the borrower. By section 7 of the Ordinance a moneylender shall on demand by

the borrower supply to him a statement of account showing, *inter alia*, the amount of the principal of the loan; and by section 7 (iii) if a moneylender, to whom a demand has been made under this section fails without reasonable excuse to comply therewith within one month after the demand has been made, he shall not, so long as the default continues be entitled to sue for or recover any sum due under the contract on account either of principal or interest....."

The position in this case is that demand was made by the debtor and the Plaintiff supplied a statement in which the "principal," as shown, is, beyond doubt, not the "principal" as defined. The Plaintiff has therefore failed to comply with the provisions of section 7 and is not entitled to sue or recover.

As regards the Plaintiff's claim in respect of the promissory note for $760 the defence under section 7 of the Moneylenders Ordinance succeeds.

As regards the other defences set up by the defendant in respect of this promissory note for $760 (P1), without setting out any detailed analysis or criticism of the evidence he gave to support these allegations I hold that he has failed to establish these defences.

But the Plaintiff also has failed to prove the claim for $1,276.80 and has, in my opinion, been unable to establish affirmatively any definite, exact amount due in respect of this promissory note.

For these reasons I dismiss the claim in respect of the promissory note for $760.

As regards the claim in respect of the promissory note P3 the execution and the consideration are admitted by the defendant.

He alleges that the loan has been repaid. There is nothing to support this except his own evidence. He has no receipt, cannot say when or how the repayment was made, and is contradicted by his own action in endorsing the promissory note when about to expire. I do not accept his explanation as to why he did this when the debt has (as he alleges) been repaid.

He says "Everything will appear in the Chetty's accounts—I kept no accounts." Well, the Chetty's accounts show clearly that the loan is still outstanding.

The allegation of material alterations in the promissory note also fails. The most important of these, i.e. that the date of the promissory note had been altered from 1st January to 13th January is, in my opinion, not true as the account books of the Chetty clearly show that the date of the loan was the 13th January.

In fact as regards all these alleged alterations I consider the true explanation of the evidence given by Defendant and his witnesses is that they were translating into terms of actual recollection certain suspicions of alteration aroused by present inspection of the appearance of the promissory note.

What they now—possibly—believe to have happened they declare as actual knowledge.

I hold also that the endorsement on the promissory note was valid to extend the period of Limitation.

The Defendant therefore fails to establish his defence, and the Plaintiff is entitled to judgment for his claim on this promissory note P3.

I give judgment for the Plaintiff for the amount claimed in respect of this promissory note, namely $500.

I see nothing to support the counterclaim of the Defendant for an account and I dismiss the counterclaim with costs.

As regards costs the Plaintiff is entitled to costs in respect of the claim to which he succeeds, i.e. the claim on the promissory note P3. The Defendant is entitled to costs in respect of the claim on the promissory note P1. These costs up to the hearing to be taxed accordingly. As regards the costs of hearing I consider the time of hearing was equally divided between the respective failures and successes of the parties and I therefore am of opinion that the fairest order I can make is to award no costs of the hearing.

Solicitor for Plaintiff—*W. A. N. Battenberg.*

Solicitors for Defendants—*Battenberg & Talma.*

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.